

# **Senate File 399 - Introduced**

SENATE FILE 399  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 134)

## **A BILL FOR**

1 An Act relating to maternal health care policies for inmates  
2 and detainees and including effective date provisions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. LEGISLATIVE FINDINGS. The general assembly  
2 finds all of the following:

3     1. Restraining a pregnant woman can pose undue health risks  
4 to the woman and her pregnancy.

5     2. The vast majority of female inmates or detainees in this  
6 state are nonviolent offenders.

7     3. Restraining pregnant prison inmates increases the  
8 potential for physical harm from an accidental trip or fall.

9     4. Freedom from physical restraints is especially critical  
10 during labor, delivery, and postpartum recovery after delivery,  
11 because a woman often needs to move around during labor and  
12 recovery.

13     5. Restraints on a pregnant woman can interfere with the  
14 ability of medical staff to appropriately assist in childbirth  
15 or to conduct sudden emergency procedures.

16     Sec. 2. NEW SECTION. 904.1001 Definitions.

17     As used in this division, unless the context otherwise  
18 requires:

19     1. "*Correctional institution*" means any state correctional  
20 institution under this chapter, county jail or municipal  
21 holding facility under chapter 356, county detention facility  
22 under chapter 356A, or other detention facility that is used to  
23 detain or restrain a person, including a juvenile, under the  
24 laws of this state or the United States.

25     2. "*Corrections officer*" means the official who is  
26 responsible for oversight of a correctional institution or the  
27 official's designee.

28     3. "*Detainee*" means any adult or juvenile person detained or  
29 restrained under the immigration laws of the United States at  
30 any correctional institution.

31     4. "*Inmate*" means any adult or juvenile person incarcerated  
32 or detained in a correctional institution who is accused  
33 of, convicted or adjudicated guilty of, or sentenced for, a  
34 criminal or immigration law violation including persons on  
35 probation, parole, or pretrial release, or in any diversionary

1 program.

2 5. "*Labor*" means the period of time before a birth during  
3 which contractions are of sufficient frequency, intensity, and  
4 duration to bring about effacement and progressive dilation of  
5 the cervix.

6 6. "*Postpartum recovery*" means, as determined by the  
7 attending physician, the period immediately following delivery,  
8 including the entire period a woman is in the hospital or  
9 infirmary after birth.

10 7. "*Restraint*" means any physical restraint or mechanical  
11 device used to control the body or limb movement of an inmate  
12 or detainee, including but not limited to flex cuffs, soft  
13 restraints, hard metal handcuffs, a black box, chubb cuffs, leg  
14 irons, belly chains, a security chain, or a convex shield.

15 Sec. 3. NEW SECTION. 904.1002 Restraint of pregnant inmates  
16 or detainees.

17 1. A correctional institution shall not use restraints on  
18 an inmate or detainee known to be pregnant, including during  
19 labor, delivery, or postpartum recovery, unless any of the  
20 following apply:

21 a. The inmate or detainee refuses to undergo a urine-based  
22 pregnancy test, if not visibly pregnant.

23 b. The inmate has been confined for less than twenty-four  
24 hours at a correctional institution other than a state  
25 correctional institution.

26 c. A corrections officer makes an individualized  
27 determination that the use of a restraint on the inmate or  
28 detainee is necessary due to an extraordinary medical or  
29 security circumstance described under subsection 2.

30 2. A corrections officer may make an individualized  
31 determination that use of a restraint is necessary for a  
32 pregnant inmate or detainee because the inmate or detainee is a  
33 substantial flight risk or some other extraordinary medical or  
34 security circumstance dictates the use of restraints to ensure  
35 the safety and security of the inmate or detainee, the staff of

1 the correctional institution or medical facility, the general  
2 public, or other inmates or detainees.

3 3. Notwithstanding subsections 1 and 2, restraints shall  
4 not be used under the following circumstances:

5 a. If a physician, nurse, or other health professional  
6 treating the inmate or detainee requests the restraints not be  
7 used. If such a request is made pursuant to this paragraph,  
8 the corrections officer accompanying the inmate or detainee  
9 shall immediately remove the restraints, unless the corrections  
10 officer determines that removing the restraints would pose an  
11 imminent extraordinary security circumstance described under  
12 subsection 2.

13 b. If the correctional institution has actual and  
14 constructive knowledge of the pregnancy and the inmate or  
15 detainee is in at least the twenty-first week of pregnancy.  
16 However, in such circumstances leg or waist restraints may be  
17 used under the direction of the physician, nurse, or other  
18 health professional treating the inmate or detainee.

19 c. During labor or childbirth.

20 4. If a corrections officer is requested to be present  
21 in the birthing room during the labor or childbirth, the  
22 corrections officer shall be female if practicable.

23 5. a. If a restraint is used pursuant to this section, the  
24 restraint used shall be used in the least restrictive manner.

25 b. A corrections officer making the determination to use a  
26 restraint pursuant to this section shall make written findings  
27 within ten days of the decision to use such a restraint. The  
28 findings shall be kept for at least five years and are public  
29 records, except no individually identifying information of an  
30 inmate or detainee shall be made public without the written  
31 consent of the inmate or detainee.

32 Sec. 4. NEW SECTION. 904.1003 Transportation of a pregnant  
33 inmate or detainee.

34 A correctional institution shall use a wheelchair to  
35 transport a known pregnant inmate or detainee to or from a

1 transport vehicle or to or from any appointment unless directed  
2 otherwise by the physician, nurse, or other health professional  
3 treating the inmate or detainee.

4     Sec. 5. NEW SECTION.   **904.1004 Birth plan.**

5     1. A correctional institution shall develop a birth  
6 plan with a known pregnant inmate or detainee if the inmate  
7 or detainee is likely to be confined at the correctional  
8 institution during the childbirth. The birth plan shall  
9 include a support person designated by the inmate or detainee  
10 who may be present in the birthing room with the inmate or  
11 detainee during labor and childbirth.

12    2. The correctional institution may, for good cause, reject  
13 the support person designated in the birth plan from being  
14 present in the birthing room. If the correctional institution  
15 rejects the support person, the correctional institution shall  
16 specify the reasons for rejecting the support person in writing  
17 to the inmate or detainee as soon as possible if practicable  
18 under the circumstances, in order to allow the inmate or  
19 detainee to designate a new support person to be present in the  
20 birthing room.

21     Sec. 6. NEW SECTION.   **904.1005 Damages.**

22     In addition to any other remedy authorized by law, a  
23 correctional institution that restrains an inmate or detainee  
24 in violation of this division may be liable for civil damages  
25 and reasonable attorney fees and costs.

26     Sec. 7. NEW SECTION.   **904.1006 Report.**

27     The department of corrections, in conjunction with the  
28 other entities supervising inmates and detainees in the state,  
29 shall file a report with the general assembly by August 1 of  
30 each fiscal year, detailing every instance in which restraints  
31 were used on a pregnant inmate or detainee pursuant to this  
32 division. The report shall not contain personal identifying  
33 information of any inmate or detainee.

34     Sec. 8. **RULES.** The department of corrections, in  
35 conjunction with other entities supervising inmates and

1 detainees in the state, shall commence rulemaking for the  
2 implementation and administration of this Act within sixty days  
3 of the effective date of this Act. The department shall not  
4 adopt emergency rules under section 17A.4, subsection 3, or  
5 section 17A.5, subsection 2, paragraph "b", to implement the  
6 provisions of this Act.

7     Sec. 9. EFFECTIVE UPON ENACTMENT. This Act, being deemed of  
8 immediate importance, takes effect upon enactment.

9                                   EXPLANATION

10     This bill relates to the use of restraints on a pregnant  
11 inmate or detainee.

12     The bill defines "correctional institution" to mean any  
13 state correctional institution, county jail, municipal holding  
14 facility, county detention facility, or other detention  
15 facility that is used to detain or restrain a person, including  
16 a juvenile, under the laws of this state or the United States.

17     The bill defines "inmate" to mean any adult or juvenile  
18 person incarcerated or detained in a correctional institution  
19 who is accused of, convicted or adjudicated guilty of, or  
20 sentenced for, a criminal or immigration law violation  
21 including persons on probation, parole, or pretrial release,  
22 or in any diversionary program.

23     The bill defines "detainee" to mean any adult or juvenile  
24 person detained or restrained under the immigration laws of the  
25 United States at any correctional institution.

26     The bill prohibits a correctional institution from using  
27 a restraint on an inmate or detainee known to be pregnant,  
28 including during labor, delivery, or postpartum recovery,  
29 unless any of the following apply: the inmate or detainee  
30 refuses to undergo a urine-based pregnancy test, if not visibly  
31 pregnant; the inmate has been confined for less than 24 hours  
32 at a correctional institution other than a state correctional  
33 institution; or a corrections officer makes an individualized  
34 determination that the use of a restraint on a pregnant inmate  
35 or detainee is necessary due to an extraordinary circumstance.

1 A corrections officer may make an individualized  
2 determination under the bill if any of the following  
3 extraordinary circumstances apply: the inmate or detainee is  
4 a substantial flight risk or some other medical or security  
5 circumstance dictates the use of restraints to ensure the  
6 safety and security of the inmate or other persons.

7 The bill prohibits the use of restraints on a pregnant  
8 inmate or detainee under the following circumstances: when  
9 medical personnel request the restraints not be used, unless a  
10 corrections officer determines the inmate or detainee poses an  
11 imminent security risk; when the correctional institution has  
12 actual knowledge of the pregnancy and the inmate or detainee  
13 is in at least the twenty-first week of pregnancy, except leg  
14 or waist restraints may be used under the direction of medical  
15 personnel; or during labor or childbirth. If a corrections  
16 officer makes a determination that restraints be used because  
17 the inmate poses an imminent security risk, the bill requires  
18 the correctional officer to make written findings within 10  
19 days of the decision to use the restraints.

20 The bill requires a correctional institution to use a  
21 wheelchair to transport a known pregnant inmate or detainee  
22 to or from a transport vehicle or to or from any appointment,  
23 unless otherwise directed by medical personnel.

24 The bill requires the correctional institution to develop  
25 a birth plan with a known pregnant inmate or detainee if the  
26 inmate or detainee is likely to be confined at the institution  
27 during the childbirth. The plan shall include a support person  
28 designated by the inmate or detainee who may be present in the  
29 birthing room with the inmate or detainee during labor and  
30 childbirth. The bill permits the correctional institution to  
31 reject, for good cause, the support person from being present  
32 in the birthing room. If the correctional institution rejects  
33 the presence of the support person in the birthing room, the  
34 bill allows the inmate or detainee to designate another support  
35 person if practicable under the circumstances.

1     The bill specifies that in addition to any other remedy  
2 authorized by law, a correctional institution that restrains an  
3 inmate or detainee in violation of the bill may be liable for  
4 civil damages and reasonable attorney fees.

5     The bill requires the department of corrections, in  
6 conjunction with the other entities supervising inmates and  
7 detainees in the state, to file a report with the general  
8 assembly by August 1 of each fiscal year, detailing every  
9 instance in which restraints were used on a pregnant inmate or  
10 detainee pursuant to the bill. The report shall not contain  
11 personal identifying information of any inmate or detainee.

12    The bill requires the department of corrections and other  
13 entities supervising inmates and detainees to commence  
14 rulemaking within 60 days of the effective date of the bill,  
15 except specifically prohibits the adoption of emergency rules.

16    The bill takes effect upon enactment.